

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.3897 OF 2004

The State of Maharashtra ...Applicant
V/s.

Rameshwar Chainsukhdas Agarwal ...Respondent
Mr. A.S. Gadkari A.P.P. for the Applicant.

**CORAM : A.S. OKA, J.
DATED : JUNE 14, 2005.**

P.C.:

1. Heard Shri. Gadkari, learned A.P.P. for the Applicant-State. He states that concern Investigating Officer is personally present in the Court. This Application is for cancellation of bail granted by learned Special Judge under the MCOC Act in favour of the Respondent. By the said Order passed by the learned Special Judge on 12th August, 2004 the Respondent was ordered to be enlarged on bail subject to executing P.R. Bond in sum of Rs.1,00,000/- with two or more sureties in equal amount subject to conditions incorporated in the said Order.

2. The prayer for cancellation of bail is not based on any event subsequent to the date of Order granting bail. The challenge is on merits. The learned A.P.P. submitted that now sanction has been accorded under Section 23(2) of the MCOC Act. He submitted that the

learned Special Judge has ignored the provisions of Section 21(4) of the MCOC Act and has enlarged the Respondent on bail. He submitted that on merits the Respondent was not entitled to the Order of bail. He has taken me through the relevant portion of the Order granting bail.

3. I have considered the submissions of learned A.P.P. It is to be noted here that the remedy of cancellation of bail cannot be lightly resorted to as held by the Apex Court. It is to be noted here that this is not a case where the allegation against the Applicant is regarding interference or attempt to interfere with administration of justice. No allegation is made regarding the misuse of the concession granted by the Order of bail. This is also not the case where it is alleged that by ignoring the material evidence on record, a perverse order of bail is passed.

4. On reading of the Order granting bail, it appears that the entire material available on record was considered by the learned Special Judge. The learned Special Judge noted that for a period of ten days custodial interrogation was granted to the Investigating Officer. The learned Special Judge

noted that age of the Respondent at the relevant time was 68 years and was receiving medical treatment. The learned Special Judge held that the case of the Respondent has to be distinguished from the case of an accused who is a ganster or who is a member of an Organised Crime Syndicate. The learned Special Judge on the basis of material on record came to the conclusion that stringent provisions as to grant of bail on the basis of MCOC Act ought not to be applied to the Respondent who was facing a private prosecution and who cannot be branded as gangster or a member of Organised Crimes Syndicate. The Order shows that the learned Special Judge noted the fact that the only allegation against the Respondent was that he had entered into communication with a gangster on telephone.

5. Thus, after considering the merits of the case learned Special Judge has granted bail in favour of the Respondent by imposing stringent condition of filing P.R. Bond in sum of Rs.1,00,000/- with two or more sureties in the same amount. The Respondent was directed to co-operate in investigation as and when required by the Investigating Officer and another conditon has been imposed directing the Respondent not to leave the city of Bombay without written permission

of the Court. The Respondent was directed to inform his address and change in the address and also his telephone number to the Investigating Officer and to the Court. There is no allegation whatsoever of any breach committed by the Respondent of the conditions imposed by the learned Special Judge. In view of what is stated above, no case is made out for cancellation of bail. The Application is rejected.

JUDGE